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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/026,887	12/27/2001	Todd Lagimonier	003636.0114	1873

7590 12/03/2008

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EXAMINER	
HARRELL, ROBERT B	

ART UNIT	PAPER NUMBER
2442	

MAIL DATE	DELIVERY MODE
12/03/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/026,887	LAGIMONIER ET AL.	
	Examiner	Art Unit	
	Robert B. Harrell	2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 August 2008 and prior*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9,19 and 20* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9,19 and 20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *27 December 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *20071220 and 2080304*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☒ Other: *see attached Office Action*.

1. Claims 1-9, 19, and 20 remain presented for examination.

2. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed.

3. The restriction requirement, mailed 06 June 2007, continues and is hereby made FINAL. To date, the applicant has not indicated the supposed errors in the restriction requirement, thus, in light of the non-elected claims having thus been cancelled, and no rebuttal against the restriction requirement by the applicant, the election is treated as one without traverse even if indicated as one with traverse since to date there is no rebuttal and the non-elected claims have since been cancelled by amendments.

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. ***Claims 1-9, 19 and 20 are rejected under 35 U.S.C. 101*** because the claimed invention, in light of the specification, encompasses non-statutory subject matter since such reads on (encompass) software or program per se' (In re Beauregard (CAFC) 35 USPQ2d 1383) and MPEP 2106 (New EXAMINATION GUIDELINES FOR COMPUTER-RELATED INVENTIONS). Even though drafted as "A method", each of the recited elements encompass their software or program per se' equivalent (i.e., a client such as a Netscape Web Browser and/or a server such as Apache are each software devices and yet phrased as a client and a server); thus, the whole of the method encompasses pure software or program per se'; unlike "A method executing on a ***hardware***". Also, while a hardware device claim, with functional acts, may inherently encompass a corresponding method, the same does not hold in the reverse since a corresponding method is broader in scope and can encompass a scope void of any hardware. Per the program storage medium, such encompasses a carrier wave or transmission medium (carrier waves store data for the duration of transmission over a period of time and is thus storage); unlike a "***hardware*** computer readable program storage medium".

6. The following is a quotation of the second paragraph of 35 U.S.C 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. ***Claims 1-9, 19, and 20 are rejected under 35 U.S.C 112, second paragraph***, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the applicant regards as the invention. The scope of meaning of the following claim language is not clear:

a) "said determination of said third server"--claim 3.

8. As to 7 (a) above, this is but an example of numerous cases where clear antecedent basis are lacking and not an exhausting recital. Any other term(s) or phrase(s) over looked by examiner and not listed above which start with either "the" or "said" and do not have a single proper antecedent basis also is indefinite for the reasons outlined in this paragraph. Also, this is but an example where term(s) or phrase(s) are introduced more than once without adequate use of either "the" or "said" for the subsequent use of the term(s) or phrase(s). Moreover, multiple introduction of a term, or changes in tense, results in a lack of clear antecedent basis for term(s) or phrase(s) which relied upon the introduced term. Failure to correct all existing cases where clear antecedent basis are lacking can be viewed as ***non-responsive***. Nonetheless, should a response yield all claims allowable short ***a few*** cases where clear antecedent basis are lacking within the claims, a preemptive authorization to enter an examiner's amendment to the record to correct such would accelerate a notice of allowance over a final rejection. Such could be added at the end of an applicant's response with the following statement: "Examiner is hereby authorized, without the need of further contact by examiner, to enter an Examiner's Amendment to correct any cases where antecedent basis are lacking." if the applicant so elects. This does not diminish the applicant's requirement to correct all such cases not so listed in the example few given above nor prohibit any amendments after a notice of allowance by the applicant.

9. Per claims 1-9, 19 and 20, it cannot be clearly ascertained if the claims encompass only hardware, or software, or a combination since there is no clear recital of actual hardware.

10. Per claim 1 (lines 3-4); it cannot be clearly ascertained if the request is received from a client and/or if the application and data are received from a client. "receiving a request, from a client, at a first server for at least one of an application program and data" is definite.

11. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this action:

A person shall be entitled to a patent unless -

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

12. ***Claims 1-9, 19, and 20 are rejected under 35 U.S.C. 102 (e)*** as being anticipated by Andrews et al. (United States Patent Application Number: US 2002/0038360) and/or as being anticipated by Andrews et al. (United States Patent Number: 7,020,698 B2).

13. Prior to addressing the grounds of the rejections below, should this application ever be the subject of public review by third parties not so versed with the technology (i.e., access to IFW through Public PAIR (as found on **http://portal.uspto.gov/external/portal/pair**)), this Office action will usually refer an applicant's attention to relevant and helpful elements, figures, and/or text upon which the Office action relies to support the position taken. Thus, the following citations are neither all-inclusive nor all-exclusive in nature *as the whole of the reference is cited* and relied upon in this action as part of the substantial evidence of record. Also, no temporal order was claimed for the acts and/or functions.

14. Since Andrews et al. (United States Patent Number: 7,020,698 B2) is the patented version of Andrews et al. (United States Patent Application Number: US 2002/0038360), the two being almost the same, examiner will cited to sections of Andrews et al. (United States Patent Application Number: US 2002/0038360) as follows.

15. Per claim 1, Andrews taught a method (e.g., see Title) of optimizing dissemination of information in a distributed environment (e.g., see Abstract (lines 2-3) and figure 1), said method comprising:
a) receiving a request (e.g., see figure 1 ("REQUEST")) at a first server (e.g., see figure 1 (54)) for at least one of an application program and data from a client (e.g., see figure 1 (52), Abstract, and paragraph [0031]-et seq.);
b) retrieving at said first server a location of a second server (e.g., see figure 1 (54a-54e)) within said distributed environment storing said at least one of said application program and said data associated with said request (e.g., see paragraph [0032]-et seq.);
c) packaging a message object (e.g., see paragraph [0032 (lines 5-8)]) with data associated with said request for transmission (i.e., by the client) to said second server; and,
d) transmitting said message object to said second server to allow said second server to directly service said client (e.g., see paragraph [0009]-[0018]).

16. In review, giving the claims their broadest reasonable interpretation in light of the specification, a first server received a request, from a client, for application program and/or data. Based on the request, a second server is located, by the first server, and a packaged message object (i.e., redirect data) is sent back to the client for transmission of the message object to the second, or third, server to obtain the application program and/or data over the most efficient path.

17. Per claim 2, claim 3, claim 4, claim 5, and claim 6, per the summary of Andrews, once the client transmitted the message object to a second server (e.g., see figure 1 (54a)), or a third server (e.g., see figure 1 (54b)), that server then serviced the client based on the most efficient path (URL is an itinerary of at least one), to the server, based on a profile (i.e., client location) within the distributed network environment; and, continued to service the client, one service after the next, until done.

14. Per claims 7-9, 19, and 20, these claims do not teach or defined above the correspondingly rejected claims given above, and are thus rejected for the same reasons given above.

15. ***A shortened statutory period for response to this action is set to expire 3 (three) months and 0 (zero) days from the data of this letter. Failure to respond within the period for response will cause the application to become abandoned (see MPEP 710.02, 710.02(b)).***

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert B. Harrell whose telephone number is (571) 272-3895. The examiner can normally be reached Monday thru Thursday from 5:30 am to 2:00 pm.

17. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell, can be reached on (571) 272-3868. The fax phone number for all papers is (571) 273-8300.

18. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-9600.

/Robert B. Harrell/
ROBERT B. HARRELL
PRIMARY EXAMINER
GROUP 2442